

IN THE MATTER OF	:	BEFORE THE
HIGH'S OF BALTIMORE, INC.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-010C

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DECISION AND ORDER

On June 5, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of High's of Baltimore, Inc., Petitioner, for a conditional use for the expansion and modification of a gasoline service station including a convenience store in a B-2 (Business: General) Zoning District, filed pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine, Esquire, represented the Petitioner. Wayne Newton, Mark Keely and Brian Darnell testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the lessee of a portion of the subject property, known as 11840 Lime Kiln Road, which is located in the 5th Election District at the northwest corner of Lime Kiln Road and Maryland Route 216 in Fulton (the "Property"). The Property is referenced on Tax Map 41, Grid 19 as Parcel 486.

2. The Petitioner leases the southern portion of the Property, which is quadrilateral-shaped and consists of about 2.709 acres (the "Site"). The Site has about 240 feet of frontage on Route 216 and 674 feet of frontage on Lime Kiln Road. The Property is improved with a 2,412 square foot convenience store situated in the eastern portion of the Site about 200 feet west of Route 216 and 50 feet north of Lime Kiln Road. A one-story 1,815 square foot building, currently used as an insurance office, is located in the southeast portion of the Site. The Site has three gasoline fuel islands covered by a 24' wide by 72' long canopy and located about 54 feet east of the convenience store building. Seven parking spaces are situated in front of the store. To the north of the pump island are underground storage tanks, 12 parking spaces, an air pump and kerosene pump, and a loading area. Three parking spaces and a loading area are situated in the southeast corner of the Site. A loading area and fenced dumpster pad are located north of the convenience store.

The Site is accessed from two points – one driveway entrance from Route 216 at the northeast corner of the Site, and one from Lime Kiln Road about 250 feet from the southeast corner of the Site.

The Site was approved for a special exception for a gasoline service station and convenience store under BA Case No. 95-61E and has been in operation since 1997.

3. Vicinal properties include:

(a) To the north is the remainder of the Property, which is zoned B-1 and improved with several small commercial buildings. Further north is the Fulton Post Office and Fulton Station Shopping Center, which are also zoned B-1.

(b) To the east across Route 216 is Parcel 330, a 108-acre parcel zoned RR-MXD-3 that is currently in agricultural use.

(c) To the south across Lime Kiln Road are several RR-DEO zoned lots improved with single-family detached dwellings.

(d) To the west is Parcel 92, a B-1 zoned lot improved with an office supply store.

4. The Petitioner proposes to increase the number of fuel pump islands and expand the canopy on the Site. Three new pump islands will be added to the east of the existing fueling area. The canopy will be doubled in size to cover the new pump islands. Lighting will be oriented away from vicinal properties and shielded and directed so that it will not shine onto adjacent properties nor cause glare for nearby motorists. The three parking spaces and loading area in the southeast portion of the Site will be moved about 18 feet to the southeast to accommodate the drive aisle for the new fueling area. In addition, the Petitioner will remove a portion of the entrance island south of the Route 216 entranceway in order to provide room for vehicle circulation. At the hearing, the Petitioner amended its petition to also provide for the widening of the Route 216 entranceway by removing a portion of the drive aisle on the north side (see Exhibit 1).

Vehicles will continue to use the existing access points. In addition, a third access point was recently opened connecting the north end of the Site to the post office and shopping center properties.

5. The Petitioner proposes that the facility will continue to operate from 5:30 a.m. until 11:00 p.m., seven days a week and will employ two full-time and four part-time employees, with no more than three employees on site at any one time.

6. The petition indicates that the only other existing gasoline service station in the area is located on Johns Hopkins Road about 2½ miles north of the Site. The DPZ report states that a new gasoline service station has recently opened on Route 216 one mile east of the Site.

7. The 2000 General Plan designates the Property as a "Rural Conservation" land use. The Property will be served by public sewer facilities and an on-site private well. Route 216 is a minor arterial with two travel lanes within a future 100-foot right-of-way and a 45 mph speed limit. Lime Kiln Road is a minor collector with two travel lanes within a future 60-foot right-of-way and a 30 mph speed limit. According to the DPZ report, visibility from the access driveway entrances appears to be acceptable.

8. Mr. Newton, a consulting engineer, testified that the widened paving will allow proper circulation on site. He provided a scale drawing indicating that up to 11 vehicles can be stacked on site at one time waiting to fuel without blocking drive aisles (see Exhibit 2). Mr. Keely, a transportation planner, testified that the sight distance at the Route 216 entrance is over 1,000 feet in each direction. Mr. Darnell testified that the addition of more pumps on the Site will help meet an increase in demand and will improve the traffic circulation on site by reducing stacking. He testified that the Petitioner also plans to upgrade the fuel pumps to increase the pump speed by 30%. The Petitioner proposes to offer a propane cylinder exchange service on the premises, but no propane filling or refilling will occur. The expanded canopy will be designed with brick columns to match the façade of the convenience store.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Rural Conservation" land use. A gasoline service station and convenience store is presumptively considered compatible with rural conservation land use. In addition, the 2000 General Plan designates Property for commercial retail use, and the surrounding properties have been accordingly zoned B-1 or B-2. The Petitioner's proposed use will be of relatively moderate intensity on a 2.709-acre site. The Property is located at the intersection of a minor arterial and minor collector road. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a gasoline service station use in the B-2 district:

1. Physical Conditions. The Petitioner's proposed convenience store with gasoline pumps will not substantially differ from the existing use and will consist of typical activities for these uses. The uses are well separated and buffered from vicinal properties and roadways. Adjoining uses are also commercial in nature. Lighting will be oriented away from vicinal properties and shielded and directed so that it will not shine onto adjacent properties nor cause glare for nearby motorists. Any noise, odor or light generated by the uses will be attenuated by

distance and will not be greater than that ordinarily associated with a gasoline service station/convenience store use. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a gasoline service station in the B-2 zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. No new structures are proposed except for the expansion of the existing canopy on the Site. The proposed canopy will be moderate in size and height and will be located away from the roadways and vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The required minimum parking spaces for the proposed uses on the Site is 21 spaces; the petition provides for 22 parking spaces, which is more than adequate. The parking areas are well separated by distance and adequately screened by landscaping from the adjoining roads and neighboring properties. The dumpster is well separated and screened from vicinal properties. Consequently, parking areas and driveways are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. Three existing access drives will continue to provide access to the proposed facility. The drives have adequate sight distance in both directions. The reconfiguration of the improvements on the site will improve on-site circulation and vehicle access. The addition of pump islands and the proposed widening of the Route 216 entranceway

will reduce stacking on site. Consequently, the driveways will provide safe access with adequate sight distance, as required by Section 131.B.2.d.

II. Specific Criteria for Gasoline Service Stations (Section 131.N.25).

1. The proposed facility will be located in a commercially developed area. Although there is a recently built gasoline service station one mile east of the Site and an existing station 2½ miles to the north, there was no evidence of other gasoline service stations in the area. What's more, this proposal is for the expansion of a gasoline service station that has been in existence for nearly 10 years, and not a new establishment. Given the existence of compatible uses in the area, the use will not adversely affect the general welfare or logical development of the neighborhood. Given that this is merely an expansion of an existing use and there are only two other gasoline service stations within 2½ miles of the Site, the use will not have a blighting influence as a result of proliferation of gasoline service stations within the area, in accordance with Section 131.N.25.a.¹

2. The 2.709-acre Site exceeds the minimum lot size of 20,000 square feet as required by Section 131.N.25.b.

3. The Site has about 240 feet of frontage on Route 216 and 674 feet of frontage on Lime Kiln Road, well in excess of the minimum of 120 feet of frontage on a public road required by Section 131.N.25.c.

4. No new landscaping is proposed. The landscaping plan approved in BA Case No. 95-61E shall continue to apply and meets the requirements of Section 131.N.25.d.

¹ I differ from the DPZ report in this regard, which recommends denial of the petition based in part upon its conclusion that "a reasonable public need for the expansion is questionable." Public need is no longer a criterion for the approval of a gasoline service station. Additionally, I find that the location of three gasoline stations within a 2½ mile radius cannot reasonably be considered such a rapid increase in growth as to have ruinous effects on the welfare of the neighborhood.

5. The Site does not border a residential district; therefore Section 131.N.25.e does not apply.

6. The existing dumpster pad is enclosed by a fence; it is therefore be screened from view as required by Section 131.N.25.f. No vehicle repair operations are proposed.

7. As stated in II.B.3 and 4 above, the access driveways and on-site drive aisles are designed and located to ensure safe and efficient movement of traffic and pedestrians as required by Section 131.N.25.g.

8. Operation.

a. Outside operations are limited to the dispensing of gasoline, diesel, kerosene, and pressurized air, in accordance with Section 131.N.25.h(1).

b. No vending machines will be located on the Site. The sale of propane through a propane cylinder exchange service, provided no propane filling or refilling occurs, shall be permitted as an accessory use, in accordance with Section 131.N.25.h(2).

c. The Petitioner will maintain the premises at all times in a clean and orderly condition including the care and replacement of plant materials required in the landscaping plan, as required by Section 131.N.25.h(3).

d. The proposed use is not adjacent to a residential district; therefore, Section 131.N.25.h(4) does not apply.

9. Other Uses.

a. No changes to the convenience store approved in BA Case no. 95-61E are proposed; the Site complies with Section 131.N.25.i.(1).

b. The Property is located in a B-2 zone; therefore, Section 131.N.25.i.(2) does not apply.

ORDER

Based upon the foregoing, it is this **13th day of July 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of High's of Baltimore, Inc., for a conditional use for the expansion and modification of a gasoline service station including a convenience store in a B-2 (Business: General) Zoning District, is hereby **GRANTED;**

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended herein, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.